

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**NP SUNSET LLC d/b/a  
SUNSET STATION HOTEL CASINO**

**and**

**Case 28-CA-225263**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**MOTIONS TO TRANSFER AND CONTINUE MATTER BEFORE  
THE BOARD AND FOR SUMMARY JUDGMENT**

The General Counsel, by the undersigned Counsel for the General Counsel, hereby files with the National Labor Relations Board (the Board) pursuant to Sections 102.24 and 102.50 of the Board's Rules and Regulations, Series 8, as amended (the Board's Rules), these motions to transfer and continue matter before the Board and for summary judgment with respect to the test of certification by NP Sunset LLC d/b/a Sunset Station Hotel and Casino (Respondent) of International Union of Operating Engineers Local 501, AFL-CIO (the Union) and, in support of these motions, alleges as follows:

1. On June 29, 2018, the Union filed a Petition in Case 28-RC-222992, seeking certification as the representative of certain employees of Respondent. (A copy of the Petition and the Affidavit of Service are attached as **GCX 1** and **GCX 2**, respectively.)

2. On July 9, 2018, a pre-election hearing was conducted by a Hearing Officer of the Board wherein Respondent contended that the Petition should be dismissed as the petitioned-for employees were guards within the meaning of the Act. (A copy of Respondent's July 5, 2018 Statement of Position and supporting brief and filed in response to the Petition are attached as **GCX 3** and **GCX 4**, respectively.)

3. On July 13, 2018, the Regional Director for Region 28 of the Board (the Regional Director) issued a Decision and Direction of Election, directing that an election be held on Thursday, July 19, 2018, from 7:00 a.m. to 8:00 a.m. and 3:00 p.m. to 4:00 p.m. in the Sevilla Banquet Room at Respondent's facility located at 1301 West Sunset Road, Henderson, Nevada. (A copy of the Decision and Direction of Election is attached as **GCX 5**.)

4. On July 19, 2018, a secret ballot election was conducted among Respondent's employees in the unit described in the Decision and Direction of Election. At the conclusion of the election, the parties were furnished with a Tally of Ballots. The Tally of Ballots shows that of approximately 12 eligible voters, 10 cast valid ballots for the Union, and one (1) cast a valid ballot against the Union. There were no challenged ballots or void ballots. No post-election objections were filed by either party. (A copy of the Tally of Ballots is attached as **GCX 6**.)

5. On August 1, 2018, the Regional Director issued a Certification of Representative, certifying the Union as the exclusive representative of all the employees in the following bargaining unit (the Unit):

All full-time and regular part-time slot technicians, utility technicians, and slot mechanics employed by [Respondent] at its facility in Henderson, Nevada; excluding all other employees, office clerical employees, professional employees, and guards and supervisors as defined by the National Labor Relations Act.

(A copy of the Certification of Representative is attached as **GCX 7**.)

6. On August 13, 2018, Respondent filed with the Board its Request for Review of the Regional Director's Decision and Direction of Election and Certification of Representative, including exhibits. (A copy of Respondent's Request for Review and exhibits are attached as **GCX 8**.) On about August 20, 2018, the Union filed with the Board its

Opposition to Respondent's Request for Review. (A copy of the Union's Opposition is attached as **GCX 9**.) On September 7, 2018, the Board issued its unpublished Order, denying Respondent's Request for Review. (A copy of the Board's Order is attached as **GCX 10**.)

7. On August 9, 2018, the Union filed the charge in Case 28-CA-225263, alleging violations of Section 8(a)(1) and (5) in that Respondent refused to recognize and bargain with the Union as the certified representative of the Unit, and refused to provide relevant and necessary information requested by the Union for purposes of collective-bargaining. (Copies of the charge and the affidavit of service are attached as **GCX 11** and **GCX 12**, respectively.)

8. On August 27, 2018, the Regional Director issued a Complaint and Notice of Hearing (the Complaint), alleging, in pertinent part, that since about July 27, 2018, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit, and has failed and refused to provide the Union with necessary and relevant information requested on July 26, 2018. (Copies of the Complaint and the affidavit of service are attached as **GCX 13** and **GCX 14**, respectively.) On September 10, 2018, the Regional Director issued an Errata to the Complaint to correct two typos. (Copies of the Errata and affidavit of service are attached as **GCX 15** and **GCX 16**, respectively.)

9. On August 16, 2018, Respondent filed an Answer to the Complaint. (A copy of Respondent's Answer is attached as **GCX 17**.) Respondent does not intend to file anything in response to the Errata to the Complaint and stands on its Answer. (A copy of Respondent's email confirming it does not intend to file anything in response to the Errata is attached as **GCX 18**.) In its Answer, Respondent admits/denies the Complaint allegations as follows:

- i. Admits Complaint paragraph 1 establishing the filing and service of the charge.
- ii. Admits Complaint paragraph 2 establishing commerce and jurisdiction.
- iii. Admits Complaint paragraph 3 establishing the labor organization status of the Union.
- iv. Denies (in part) Complaint paragraph 4(a) alleging that Valerie Murzl (Murzl) is the Corporate Vice President of Human Resources a statutory supervisor within the meaning of Section 2(11) of the Act; but, Admits that Murzl is a statutory agent of Respondent within the meaning of Section 2(13) of the Act.
- v. Denies Complaint paragraph 4(b) alleging that Respondent's counsel have been agents of Respondent within the meaning of Section 2(13) of the Act on the grounds that it is "vague and lacks requisite and meaningful specificity."
- vi. Denies Complaint paragraph 5(a) alleging the appropriateness of the Unit.
- vii. Admits Complaint paragraph 5(b) establishing that on July 19, 2018 a representation election was conducted among employees in the Unit and, on August 1, 2018, the Union was certified as the exclusive collective-bargaining representative of the Unit.
- viii. Denies Complaint paragraph 5(c) alleging the Union's status as the exclusive collective-bargaining representative of the Unit based on Section 9(a) of the Act at all times since July 19, 2018.

ix. Admits Complaint paragraph 5(d) establishing that since about July 26, 2018, the Union has requested that Respondent recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

x. Admits Complaint paragraph 5(e) establishing that since about July 27, 2018, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

xi. Admits Complaint paragraph 5(f) establishing that on about July 26, 2018, the Union requested in writing that Respondent furnish the Union with the following information:

1. A list of current employees including their names, dates of hire, rates of pay job classification, last known address, phone number, date of completion of any probationary period, and Social Security number.
2. A copy of all current company personnel policies, practices or procedures.
3. A statement and description of all company personnel policies, practices or procedures other than those mentioned in Number 2 above.
4. A copy of all company fringe benefit plans including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, legal services, child care or any other plans which relate to the employees.
5. Copies of all current job descriptions.
6. Copies of any company wage or salary plans.
7. Copies of all disciplinary notices, warnings or records of disciplinary personnel actions for the last year. A copy of all witness statements for any such discipline.
8. A statement and description of all wage and salary plans which are not provided under number 6 above.

xii. Denies Complaint paragraph 5(g) alleging that the information requested by the Union, as described above (and in paragraph 5(f) of the Complaint) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

xiii. Admits Complaint paragraph 5(h) establishing that since about July 27, 2018, Respondent by its counsel, in writing, has failed and refused to furnish the information requested by the Union, as described above (and in paragraph 5(f) of the Complaint).

xiv. Denies Complaint paragraph 6 alleging that Respondent's conduct violates Section 8(a)(1) and (5) of the Act.

xv. Denies Complaint paragraph 7 alleging that Respondent's conduct affects commerce within the meaning of Sections 2(6) and (7) of the Act.

10. Respondent's denials that the Union was properly certified as the exclusive bargaining representative under Section 9(a) of the Act are predicated on Respondent's raised and rejected arguments in Case 28-RC-222992.

11. Further, Respondent does not assert that newly discovered or previously unavailable evidence has come to light since the litigation and disposition of Case 28-RC-222992. Nor does Respondent allege any special circumstances that would require the Board to reexamine its Order Denying Respondent's Request for Review of the Regional Director's Decision and Direction of Election, and Certification of Representative in Case 28-RC-222992.

12. At all material times, the Board's Rules and Regulations have held:

*Finality; waiver; denial of request.* The Regional Director's actions are final unless a request for review is granted. The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair

labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. **Denial of a request for review shall constitute an affirmance of the Regional Director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.** (Emphasis added.)

(Prior to April 14, 2015, this rule appeared in Section 102.67(f) of the Board's Rules and Regulations. It now appears in Section 102.67(g) of the Board's Rules and Regulations.)

13. Well-established Board law and Court case authority hold that a party may not relitigate, in an unfair labor practice proceeding, representation issues that were, or could have been, litigated in a prior representation proceeding. *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 159-163 (1941); *Delek Refining, Ltd.*, 363 NLRB No. 41 (Nov. 13, 2015); *Fedex Freight, Inc.*, 362 NLRB No. 140 (June 30, 2015); *The George Washington University*, 346 NLRB 155 (2005), enfd. per curiam 2006 WL 4539237 (D.C. Cir. 2006); *Ovid Convalescent Manor, Inc.*, 264 NLRB 774, 775 (1982), enfd. mem. 732 F.2d 155 (6th Cir. 1984); *Lighthouse for the Blind of Houston*, 248 NLRB 1366, 1367 (1980), enfd. 696 F.2d 399 (5th Cir. 1983); *Boatel, Inc.*, 204 NLRB 896, 897 (1973), enfd. mem. 490 F.2d 990 (5th Cir. 1974); *Keco Industries, Inc.*, 191 NLRB 257, 258 (1971), enfd. 458 F.2d 1356 (6th Cir. 1972); *General Dynamics Corp.*, 187 NLRB 679, 680 (1971), enfd. per curiam 447 F.2d 1370 (5th Cir. 1971); *Westinghouse Broadcasting Company, Inc.*, 218 NLRB 693 (1975).

14. Since Respondent has refused to recognize, bargain, and furnish the Union with information since July 27, 2018 (following the Union's July 26, 2018 request), the charge in Case 28-CA-225263 filed by the Union on August 9, 2018, is not outside the Section 10(b) six-month statute of limitations.

15. The foregoing averments and legal authority show that Respondent's Answer has not raised any genuine or litigable dispute as to a relevant or material issue of fact. Accordingly, this matter is ripe for summary judgment on the pleadings.

WHEREFORE, Counsel for the General Counsel respectfully moves:

A. That in order to expedite judgment in this unfair labor practice case, it be transferred to and continued before the Board for decision. Precedent for summarily adjudicating refusals to bargain in test-of-certification situations is well grounded, and routinely survives due process challenges. See, e.g., *NLRB v. Tallahassee Coca-Cola Bottling Co., Inc.*, 409 F.2d 201, 203 (5th Cir. 1969); *NLRB v. Union Brothers, Inc.*, 403 F.2d 883, 886-888 (4th Cir. 1968); cf. *NLRB v. Tennessee Packers, Inc.*, 379 F.2d 172, 177-178 (6th Cir. 1967), cert. denied 389 U.S. 958 (1967) (consent election).

B. That the Board take official notice of the record in Case 28-CA-208266 as defined in Section 102.68 of the Board's Rules and Regulations. See, e.g., *Delek Refining, Ltd.*, *supra*.

C. That the Board find the pleadings to reveal no controversy as to any relevant or material fact that would necessitate a hearing or an administrative law judge's decision.

D. That these Motions be ruled upon as soon as possible, so that, if it is granted, a hearing will be obviated.

E. That the Board find that the pleadings establish Respondent has violated Section 8(a)(1) and (5) of the Act, as alleged in paragraphs 6(e) of the Complaint.

F. That the Board issue a Decision and Order containing findings of fact, conclusions of law, and a remedial order consistent with the conclusion that Section 8(a)(1) and



(5) of the Act have been, and are being violated, including an order that the initial certification year shall be deemed to begin on the date Respondent commences to bargain in good faith with the Union as the certified bargaining representative of the employees in the appropriate Unit.

*Campbell Soup Company*, 224 NLRB 13 (1976), enf'd. 553 F.2d 96 (4th Cir 1977).

Dated at Las Vegas, Nevada, this 12<sup>th</sup> day of September 2018.

Respectfully submitted,

/s/ Elise F. Oviedo

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## **CERTIFICATE OF SERVICE**

I hereby certify that the **MOTIONS TO TRANSFER AND CONTINUE MATTER BEFORE THE BOARD AND FOR PARTIAL SUMMARY JUDGMENT** in NP Sunset LLC d/b/a Sunset Station Hotel and Casino, Case 28-CA-225263, were served via E-Gov, E-Filing, and Email on this 11<sup>th</sup> day of September 2018, on the following:

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